IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 811 OF 2004

Pandurang Bhagwan Hegde. ... Appellant.
Versus.
Vasant Anna Bhandare. ... Respondent.

Shri G.S.Godbole with Ms.Nisha N.Valani for the Appellant.

Mrs.Sanjivani D.Rane for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 10th March, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. This Second Appeal is filed by the unsuccessful Defendant in a suit for perpetual injunction filed by the Respondent. The case of the Respondent is that he purchased the suit land from his predecessor Daji Vhalar by sale deed dated 2nd April 1987. He alleged that the Appellant tried to interfere with his possession and therefore, the suit for perpetual injunction came to be filed. The trial Court decreed the suit and the Appeal preferred by the Appellant to the District Court has been dismissed.

2. The learned Counsel appearing for the Appellant Shri Godbole submitted that there were proceedings in respect of the mutation entries before the authorities under the Maharashtra Land Revenue Code 1966 and the orders which

have been passed in the said proceedings have attained finality. The said proceedings show that the Appellant was in possession of the suit land throughout. He submitted that none of the said orders and the 7x12 extracts which are on record of the suit has been considered by the Appellate Court. He submitted that the Respondent/Plaintiff purchased the property on 2nd April 1987. The orders of the Revenue authorities in favour of the Appellants are much prior to the date of acquisition by the Respondent and therefore, the Respondent could not be in possession of the suit land. He submitted that though the order passed by the Agricultural Land Tribunal on 22nd December 1989 is set aside in appeal, the decision of the Appellate Court is only on the technical ground of failure of the Appellant to give notice to the Respondent. He, therefore, submitted that the finding regarding tenancy of the Appellant is not set aside on merits. He submitted that the basic order dated 4th December 1989 is not set aside in Appeal and only a consequential order passed has been set aside in Appeal preferred by the Respondent.

3. The learned Counsel appearing for the Respondent has supported the impugned Judgment and Decree.

4. I have considered the rival submissions. It is an admitted position that the Appellant had filed a suit for perpetual injunction being Reg.Civil Suit No.143 of

1986 against the predecessor of the Respondent and the said suit has been unconditionally withdrawn. The trial Court has recorded a finding that in the said suit the case of the Appellant was that the Respondent's predecessor had agreed to sell the suit land to him in the year 1970 for a consideration of Rs.20,000/-. The trial Court has also held that in the proceedings under the Maharashtra Land Revenue Core, 1966 the Appellant was unable to prove his claim that he was put in possession as a tenant of the suit land. The trial Court has also held that there is no rent receipt placed on record by the Appellant and therefore, there is no evidence of actual possession of the Appellant of the suit land.

5. The Appellate Court may not have specifically referred to the orders passed under the said Code of 1966. However as stated earlier the possession which was claimed by the Appellant in the said proceedings was not on the basis of his plea of tenancy. The Appellate Court has referred to the subsequent order passed by the Agricultural Land Tribunal which was set aside at the instance of the Appellant. Considering the fact that till the year 1988-89, the Appellant never claimed to be in possession as a tenant and in the year 1986 he claimed to be in possession on the basis of a different transaction and the suit filed by him was withdrawn unconditionally. No fault can be found with the

approach of both the Courts below when the case of the Respondent was accepted and decree for perpetual injunction for protecting possession was passed. In so far as the orders passed by the authorities under the Bombay Tenancy and Agricultural Lands Act 1948 are concerned, the same have attained finality with the rejection of the Writ Petition No.6492 of 2004.

6. No substantial question of law arises in the Second Appeal. The same is dismissed with no order as to costs.

Judge.